

Federal Maritime Commission

§ 514.17

consecutively) are available for carrier/conference use.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993; 58 FR 5622, Jan. 22, 1993; 58 FR 28790, May 17, 1993; 60 FR 27230, May 23, 1995]

§ 514.16 [Reserved]

§ 514.17 Essential terms of service contracts in foreign commerce.

(a) *General.* (1) A concise statement of the essential terms (ETs) of every initial service contract (which is filed in paper form under § 514.7) and appropriate amendments to ETs resulting from any amendment of the filed service contract, shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format. Unlike most other tariff data, ETs shall be filed largely in full text, with a minimum of database formatting (but with certain other standardization), as set forth in this section. Additionally, ETs are not subject to the algorithm or linkage requirements of § 514.10(d). Filing and maintenance of ETs are accomplished through an electronic essential terms publication (ETP) for each carrier or conference filer, which contains ETs for each of the carrier's or conference's service contracts.

(2) *Cross-references*—(i) *Authority to file:* § 514.4(d)(5).

(ii) *Cancellation:* § 514.4(e)(2).

(iii) *Availability of essential terms:* § 514.7(f).

(iv) *Rejection of service contracts and/or essential terms:* § 514.7(j).

(v) *Modification, correction and cancellation:* § 514.7(k).

(vi) *Assessorials and algorithms:* § 514.10(d)(1).

(b) *Essential terms publication*—(1) *Creation and form.* The ETP is created and maintained by the filer as a separate tariff type (“ET” for “ETP”) with a tariff record and number (see § 514.11(b)). A service-contract filer, either carrier or conference, may have only one ETP for all its ETs. The ETP may also contain matter of general applicability to all ETs contained therein, such as Tariff Rules. The ATFI system will coordinate development of ET search indexes by, for example: ET, service contract

or FMC file number; by commodity name or number; by TLI number; and, by origin or destination of the commodity.

(2) *Reference to/in tariffs of general applicability.* The ETP shall:

(i) Contain reference to each carrier's or conference's tariff of general applicability; and

(ii) Be referenced in each of the carrier's or conference's tariffs of general applicability, where required to be filed under this part.

(c) *Statement(s) of essential terms; general requirements.* (1) Essential terms shall be promptly filed by the appropriate person, in the carrier's or conference's ETP and in the content and tariff format as provided by this part. (The service contract, in paper form, is required to be filed within ten (10) days of the electronic filing of the essential terms under § 514.7(g).)

(2) Essential terms may not:

(i) Be uncertain, vague or ambiguous; or

(ii) Contain any provision permitting modification by the parties other than in full compliance with this part.

(d) *Essential terms; specific requirements*—(1) *ATFI sample screen illustration.* The following ATFI simulated screen illustrates the elements required to be contained in essential terms filings and how they may appear in the ATFI system. The references in brackets in each line are to the subparagraphs of this paragraph which explain the requirements for the fields and the data contained therein. See paragraph (b)(1) of this section for provisions regarding the essential terms publication. On the screen, data above the double line, i.e., down through “Contract Termination,” shall be entered in database format in the special fields provided; data beginning with Mandatory Term No. 3 (“Commodities”) shall be entered in “full-text” format without the application of algorithms under § 514.10(d). However, the mandatory ETs (Nos. 1 to 10) shall bear the appropriate term number and exact mandatory term title, as set forth in this paragraph (and the screen). If the mandatory term does not apply (e.g., No. 7 or No. 8), the filer shall also enter the symbol “NA.”

[§ 514.17(d)(1)] ATFI ESSENTIAL TERMS SEARCH

ET Num: 681		JKL Line Essential Terms Publication (XYZ 004)	[1]
SC Num: 765		Personal Computers from Taiwan	[2]
FMC File Num: 123456		Amendment Num: 3—Available until: 31 Jan 1992	[3]
Amendment Type: C		Contract Effective: 01 Dec 1992	[4]
Filing Date: 01 Jan 1992		Special Case: 123456—Contract Expiration: 15 Jan 1993	[5]
		Contract Termination: 15 Jan 1993	[6]
Term	(Amend)	List of essential terms titles	[7]
1	(0)	Origin	[i]
2	(0)	Destination	[ii]
3	(0)	Commodities	[iii]
4	(1)	Minimum Quantity	[iv]
4	A(0)	Minimum Quantity in 20ft containers	[A]
4	B(3)	Minimum Quantity in 40ft containers	[B]
5	(0)	Service Commitments	[v]
6	(0)	Contract Rates or Rate Schedules(s)	[vi]
7	(2)	Liquidated Damages for Non-Performance (if any)	[vii]
8	(0)	Later Events Causing Deviation From ET (if any)	[viii]
9	(0)	Duration of the Contract (e.g., "46 days from 01 Dec. 1992 to 15 Jan. 1993")	[ix]
10	(0)	Assessorials	[x]
100	(0)	(Title and text—Optional)	[8]
101	(0)	(Title and text—Optional)	[8]
[999 zzz	(999)	Maximum term and amendment values]	

(2)(i) *ET Num (statement of essential terms number)*. The "ET Num" is defined by the filer and shall be entered in the appropriate field. See § 514.7(h).

(ii) *ET Heading*. The filer's title of the ET document (e.g., "Personal Computers from Taiwan") is entered here and will appear in the ETP index to the included ETs.

(3)(i) *SC NUM (service contract number)*. The "SC Num" is defined by the filer and shall be entered in the appropriate field. See § 514.7(h).

(ii) *Amendment Num*. Where feasible, ETs should be amended by amending only the affected specific term(s) or subterms, mandatory or optional. Each time any part of an ET is amended, the filer shall assign a consecutive ET amendment number (up to three digits), beginning with the number "1." (The amendment number field must be "0" or void for the initial ET filing.) Each time any part of the ET is amended, the ET "Filing Date" will be the date of filing of the amendment and the "Available Until Date" will be 30 days from the filing date, but the filer can enter a later date, making the availability period longer. See correction provisions under § 514.7(k) and paragraph (d)(5)(ii) of this section.

(iii) *Available until*. The period of availability of the essential terms to similarly situated shippers shall be no less than thirty (30) days, i.e., from the "Filing Date" (paragraph (d)(6)(i) of

this section and § 514.10(a)(2)) of the initial filing or the latest amendment, to the "Available until" date (automatically defaulted to 30 days from the Filing Date by the interactive ATFI system, but the filer can enter a later date, making the availability period longer).

(4)(i) *FMC File Num*. The FMC File Numbers will be system assigned as initial ET filings are received/processed. The FMC File Numbers will be assigned sequentially and will start at a number designated by FMC at production start. The FMC File Number will be provided to filers in the acknowledge message (Email) for filings so that they can put the number in the related service contract when it is filed in paper form. See § 514.7(h)(1)(iii)(B). This procedure will facilitate FMC linkage of the ET to its related service contract.

(ii) *Contract effective*. In addition to the period of availability of essential terms to similarly situated shippers, the service contract itself must have an effective date and an expiration date (see paragraph (d)(5)(iii) of this section and §§ 514.10 (a)(3) and (a)(4)), governing the duration of the contract between the original signatory parties. The duration must also be set forth in mandatory essential term No. 9, where the duration of the contract shall be stated as a specific fixed time period,

with a beginning date (effective date) and an ending date (expiration date).

(5)(i) *Amendment type.* All ATFI amendment codes under § 514.9, except “G” and “S” (§§ 514.9(b)(7) and 514.9(b)(19)), may be used in any combination, with up to three amendment codes for amendments to ETs. No notice period is required for amendments to ETs, except that amendments to ETs require a new “Available until” date, which must be at least 30 days from the filing date. For the amendment code “S,” see paragraph (d)(5)(ii) of this section.

(ii) *Special Case symbol and number.* The “S” amendment code (for special case under § 514.9(b)(19)(iii)) must be used singly, and in conjunction with a validated special case number for corrections to ETs. See correction provisions under § 514.7(k).

(iii) *Contract expiration.* See paragraph (d)(4)(ii) of this section.

(6)(i) *Filing date.* The filing date is automatically set by the system whenever an ET or amendment thereto is filed. See “Available until” in paragraph (d)(3)(iii) of this section.

(ii) *Contract termination date.* A statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired under the terms of the contract, or have been terminated for reasons not specifically set forth in the contract. See §§ 514.4(e)(2) and 514.7(l)(1)(ii). The contract termination date would, therefore, be the same as the contract expiration date under paragraph (d)(5)(iii) of this section, unless terminated sooner, in which case the filer would enter the earlier date when the termination event occurred.

(7) *Terms and subterms.* Mandatory essential terms Nos. 1 to 10 shall address the subjects and bear the terms’ titles for the respective numbers exactly as provided in this section. If a subject is not included, such as No. 7 or No. 8, the number must be listed with the appropriate title and the designation “NA.” All essential terms, mandatory and optional, may be subdivided into subterms (as illustrated for mandatory term No. 4) to facilitate retrieval and amendment. The mandatory terms are as follows:

(i) *Origin (No. 1).* “Origin” includes the origin port range(s) in the case of port-to-port movements, and the origin geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of “port ranges” or “geographic areas,” but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b). Origin point and port locations will be validated against the ATFI Locations database. The validated names will be “inserted” by the system in Mandatory Term #1. The Mandatory Term may not contain text, but if the filer wishes to use full text to clarify or expand on the point/port entries in Term 1, full text may be used in subterms.

(ii) *Destination (No. 2).* “Destination” includes the destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of “port ranges” or “geographic areas,” but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b). Destination point and port locations will be validated against the ATFI Locations database. The validated names will be “inserted” by the system in Mandatory Term #2. The Mandatory Term may not contain text, but if the filer wishes to use full text to clarify or expand on the point/port entries in Term 2, full text may be used in subterms.

(iii) *Commodities (No. 3).* Mandatory term No. 3 shall include commodities covered by the service contract, but these commodities may not be entered as described in § 514.13(a), i.e., commodities cannot be entered in data-element format, but the full-text format may incorporate the same elements of information, as desired. See § 514.7(c) for exempt commodities. For each commodity filed in this term, a separate formatted commodity index entry is required.

(iv) *Minimum quantity (No. 4).* Mandatory term No. 4 shall address the minimum quantity or volume of cargo and/

or amount of freight revenue necessary to obtain the rate or rate schedule(s), except that the minimum quantity of cargo committed by the shipper may not be expressed as a fixed percentage of the shipper's cargo.

(A) *Subterm.* Example: Minimum quantity in 20FT Containers.

(B) *Subterm.* Example: Minimum quantity in 40FT Containers.

(v) *Service commitments (No. 5).* Mandatory term No. 5 shall address the service commitments of the carrier, conference or specific members of a conference, such as assured space, transit time, port rotation or similar service features.

(vi) *Contract rates or rate schedule(s) (No. 6).* Mandatory term No. 6 shall contain the contract rates or rate schedules, including any additional or other charges (i.e., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges; except that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission.

(vii) *Liquidated damages for non-performance (if any) (No. 7).* Mandatory term No. 7 shall include liquidated damages for non-performance. See § 514.7(1).

(viii) *Later events causing deviation from ET (if any) (No. 8).* Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, mandatory term No. 8 shall include a clear and specific description of the event, the existence or occurrence of which shall be readily verifiable and objectively measurable. See § 514.7(1). This requirement applies to, *inter alia*, the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in

which case the contract shall set forth a rate, charge, or rate basis which will be applied.

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential term of the contract.

(ix) *Duration of the Contract (No. 9).* The duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date). See paragraph (d)(4)(ii) and (d)(5)(iii) of this section.

(x) *Assessorials (No. 10).* Mandatory Term 10 shall contain all ET assessorials, preferably using a separate subterm for each type of assessorial. For every assessorial, the filer shall set forth either:

(A) The full assessorial; or

(B) A complete cross-reference to the place(s) where it may be found.

(8) *Optional terms.* Any essential term of a service contract not otherwise specifically provided for in this section shall be entered after the mandatory terms and in numerical order, beginning with No. 100.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993; 61 FR 35686, July 8, 1996]

§ 514.18 Special permission.

(a) *General.* Section 8(d) of the 1984 Act and section 2 of the 1933 Act authorize the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 514.9. Section 9(c) of the 1984 Act authorizes the Commission to permit a controlled common carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will grant such permission only in cases where merit is demonstrated.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based